

ECS File: JPA-88-63
Project: 73-NA-337/H 0692 04C
Section: SR 73 - White River

MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
WHITE MOUNTAIN APACHE TRIBE

THIS AGREEMENT is entered into 2 July, 1991,
between the STATE OF ARIZONA, acting by and through its
DEPARTMENT OF TRANSPORTATION (the "State") and the WHITE
MOUNTAIN APACHE TRIBE, acting by and through its Tribal Council
(the "Tribe").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes
Section 28-108 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has delegated
to the undersigned the authority to execute this agreement on
behalf of the State.

2. The Tribe is empowered by Article V, Section 1 (b) of
the Amended Constitution and Bylaws of the White Mountain
Apache Tribe to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has
authorized the undersigned to execute this agreement on behalf
of the Tribe.

3. The Tribe and the State desire to construct certain
improvements to State Route 73, to include roadway widening and
associated paving; drainage improvements; curbing with
associated gutter, and appurtenant sidewalks; and a traffic
signal at the new intersection of IR-55 and SR-73, at an
estimated cost of \$3,200,000.00, hereinafter referred to as the
Project, for the safety and benefit of the public.

THEREFORE, in consideration of the mutual agreements expressed
herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Provide design, engineering, specifications and such other documents necessary to construct the Project. Incorporate the Tribe review comments as appropriate.

b. Require it's contractor to comply with the Native American portion of the State's specifications, as well as the applicable portions of the Tribe's Employment Rights ordinance.

c. Call for bids and award one or more construction contracts for the Project, estimated to cost \$3,200,000. Administer same and make all payments to the contractor. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to State.

d. Upon completion, approve and accept the Project, and provide maintenance within the State's right-of-way, with the exception of facilities to be maintained by the Tribe as noted in paragraph 2.f. herein.

e. Relocate any Tribal utilities in conflict with the proposed Project, with the exception of existing luminaires; provided, that if the Indian Health Service does not fund relocation of these luminaires, the State will fund same within the Project limits.

2. The Tribe will:

a. Review State's design documents and provide comments.

b. Provide additional right-of-way as required for the Project.

c. Provide necessary site preparations for the Project, to include building and storage tank removal as necessary to complete the Project.

d. Provide aggregate materials which comply with the State's specifications, if able, to the State's contractor, at a price equal to or better than the Tribe's most favored customer.

e. Be responsible for any contractor claims for extra compensation attributable to the Tribe.

f. Upon completion and acceptance, provide maintenance of the improvements outside the State's right-of-way and easements, and maintenance to the sidewalks within and/or outside the State's right-of-way.

g. Participate in the construction cost of a three-legged traffic signal in an amount not to exceed \$23,333.00.

h. Appoint a Tribal contact person and office in accordance with State and Tribal employment policies for reservation lands.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

2. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

3. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

4. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518 (B) and (C).

5. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E Room 222E
Phoenix, AZ 85007


White Mountain Apache Tribe
Office of the Chairman
PO Box 700
White River, AZ 85941


IN WITNESS WHEREOF, the parties have executed this agreement
the day and year first above written.

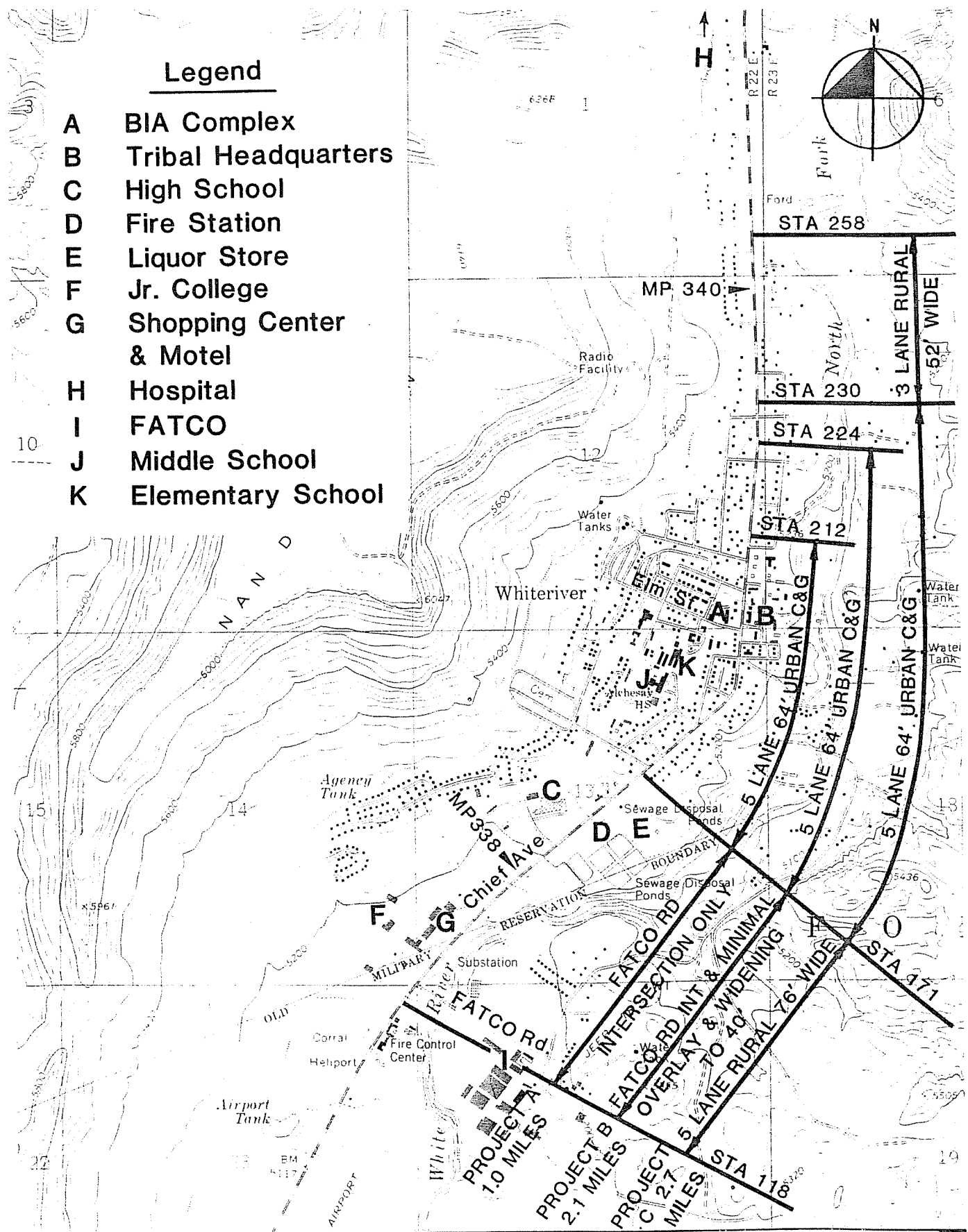
WHITE MOUNTAIN APACHE TRIBE

STATE OF ARIZONA

Department of Transportation

By 
RONNIE LUPE
Chairman

By 
For GARY K. ROBINSON
State Engineer



**WHITERIVER STREETS
PROJECTS LIMITS AND KEY
TRAFFIC GENERATORS**

ARIZONA DEPARTMENT OF TRANSPORTATION
OFFICE MEMO

EXHIBIT B

1992 - 1996 FIVE YEAR CONSTRUCTION PROGRAM

Construction & Utility Relocation	\$2,900,000
R/W Remediation	<u>260,000</u>
Total	\$3,160,000

DESIGN CONCEPT "C" - Recommended Alternative

Project Length - 2.7 Miles
FATCO Rd. Intersection Improvement
5 Lane Rural Section, 76' Wide - Sta. 118+00 to 171+00
5 Lane Urban Section, 64' Wide, C&G - Sta. 171+00 to 230+00
3 Lane Rural Section, 52' Wide - Sta. 230+00 to 258+00

Construction	\$4,737,000
Lighting	300,000
Utility Relocation	115,000
R/W Remediation	<u>260,000</u>
Total	\$5,412,000

Compared to '92-'96 Program (\$2,252,000)

The White Mountain Apache Tribe has agreed to pay for a portion of the traffic signal - an amount not to exceed \$23,333.

It is a possibility that the BIA will fund the Lighting. Details have not been explored, only the concept.

The Materials Section is reviewing the existing Initial Materials Design Memorandum and has indicated that some savings might be realized within the geocomposite fin drain costs. The pavement structural section most likely will remain as currently designed.

ARIZONA DEPARTMENT OF TRANSPORTATION
OFFICE MEMO

EXHIBIT C

1992 - 1996 FIVE YEAR CONSTRUCTION PROGRAM

Construction & Utility Relocation	\$2,900,000
R/W Remediation	<u>260,000</u>
Total	\$3,160,000

DESIGN CONCEPT "B"

Project Length - 2.1 Miles
FATCO Rd. Intersection Improvement
Widening & Overlay - Sta. 118+00 to 171+00
5 Lane, 64' Urban Section, C&G - Sta. 171+00 to 224+00

Construction	\$3,675,000
Lighting	230,000
Utility Relocation	115,000
R/W Remediation	<u>260,000</u>
Total	\$4,280,000

Compared to '92-'96 Program (\$1,120,000)

The White Mountain Apache Tribe has agreed to pay for a portion of the traffic signal - an amount not to exceed \$23,333.

It is a possibility that the BIA will fund the Lighting. Details have not been explored, only the concept.

The Materials Section is reviewing the existing Initial Materials Design Memorandum and has indicated that some savings might be realized within the geocomposite fin drain costs. The pavement structural section most likely will remain as currently designed.

ARIZONA DEPARTMENT OF TRANSPORTATION
OFFICE MEMO

EXHIBIT D

1992 - 1996 FIVE YEAR CONSTRUCTION PROGRAM

Construction & Utility Relocation	\$2,900,000
R/W Remediation	<u>260,000</u>
Total	\$3,160,000

DESIGN CONCEPT "A" - Considered to be a "Do Nothing Alternative"

Project Length - 1.0 Mile
Intersection Improvement at FATCO Rd.
5 Lane, 64' Urban Sect., C&G from Sta. 171+00 to 212+00

Construction	\$2,294,000
Lighting	112,000
Utility Relocation	115,000
R/W Remediation	<u>260,000</u>
Total	\$2,781,000

Compared to '92-'96 Program \$ 379,000 +

The White Mountain Apache Tribe has agreed to pay for a portion of the traffic signal - an amount not to exceed \$23,333.

It is a possibility that the BIA will fund the Lighting. Details have not been explored, only the concept.

The Materials Section is reviewing the existing Initial Materials Design Memorandum and has indicated that some savings might be realized within the geocomposite fin drain costs. The pavement structural section most likely will remain as currently designed.



Executive Office of the Chairman
WHITE MOUNTAIN APACHE TRIBE

RONNIE LUPE
 CHAIRMAN

ARIZONA DEPARTMENT OF TRANSPORTATION
 CONSULTANT MANAGEMENT SERVICE
 CN 92-11
 FN 400.04

RECEIVER: *[Signature]*
 DISTRIBUTION: *Subc*
Sal Foster
Trig Evans

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APR 09 1992

CONSULTANT MANAGEMENT
 SERVICES

Mr. Verne D. Seidel, Chairman
 Arizona Transportation Board
 P.O. Box 1886
 Flagstaff, AZ 86002

Dear Mr. Seidel:

About a year ago, you and I and others from our respective organizations sat down together in Whiteriver to try to get the Whiteriver Streets project back on track.

Both before and after that meeting we presented the Transportation Board with information about the need for the project, it's history and comparative information on the outcome of other similar projects in surrounding communities.

The upshot was that we reluctantly accepted a delay in the project to a construction date of FY 93-94. We were told that part of the reason for the delay was to allow time to prepare a design concept report and the extra time involved was to be sure that all the needs of the community were properly addressed by the project. The design concept report was to be done in FY 92-93.

The scoping meeting for the design concept report was finally held on January 28, 1992, nearly seven months into the fiscal year. By then, the schedule was said to be calling for bids in early summer 1993, construction to begin in August and be completed a year later.

About a month ago, we were advised construction of the project was proposed for delay until FY 94-95.

I wonder if any of this sounds as familiar to you as it did to me and to the White Mountain Apache Tribal Council. It is exactly the same pattern we have encountered for twenty years in trying to get this project built. With a heavy heart, I joined other members of the Council in passing the attached resolution on March 18 of this year.



As you look at the resolution, please note the budgetary aspects of the history of the project as well as the schedule. The budget for the project has decreased since 1986 despite the rise in construction prices. At this stage of completion of the design concept report, construction is expected to cost \$4.35 million for the project envisioned in 1989. Meeting current needs will cost even more. It seems germane to observe that the budget has not been realistic to the required project for some time.

I told you in Whiteriver that I broke all my arrows a long time ago. We have no interest in causing unnecessary difficulty for ADOT. What we want is to get our project built in FY 93-94 and funded with a budget realistic to the requirements of the job. We request and will appreciate your support to achieve this.

Sincerely yours,



Ronnie Lupe
Tribal Chairman

cc: (w/enclosure)
Donald D. Denton
Larry E. Chavez
Linda-Brock Nelson
Sharon B. Megdal
James A. Soto
Donovan M. Kramer
Charles E. Cowan
Harry A. Reed
Gary K. Robinson
Jeff Swan
Ginger Murdough

RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

WHEREAS, the White Mountain Apache Tribe has entered into a Memorandum of Agreement No. JPA 88-63 with the State of Arizona in respect to the SR 73 Whiteriver Streets Improvement Project; and

WHEREAS, said Intergovernmental Agreement relates to rights of way, drainage, signalization, parking and maintenance responsibilities relative to the construction of SR 73 from milepost 337.9 to milepost 340.0 on the Fort Apache Indian Reservation; and

WHEREAS, the record for proposed construction of the project shows the following:

ADOT FIVE YEAR PLAN	PROPOSED CONSTRUCTION OF WHITERIVER STREETS	BUDGET
1972-76	FY 73-74	\$550,000
1973-77	FY 75-76	\$600,000
1974-78	FY 76-77	\$920,000
1975-79	FY 76-77	1,500,000
1986-90	FY 90-91	3,570,000
1987-91	FY 90-91	3,570,000
1988-92	FY 90-91	3,570,000
1989-93	FY 90-91	3,170,000
1990-94	FY 90-91	3,170,000
1991-95	FY 90-91	3,200,000
1992-96	FY 93-94	2,900,000
Proposed 1993-97	FY 94-95	2,900,000

WHEREAS, the Tribal Council pursuant to Resolution No. 01-91-29 requested the State of Arizona Department of Transportation Board to utilize its good offices to expedite the design phase and construction of the Whiteriver Street Projects and therein advised the Transportation Board that the nearby non-Indian towns of Show Low, Pinetop-Lakeside, Holbrook, Taylor and Snowflake had already had their road widening projects completed, including sidewalks, curbs and other street improvements which enhanced their respective business opportunities, tourism, community growth, safety and the aesthetic appearances of said communities; and

WHEREAS, the street traffic in Whiteriver equals or exceeds the foregoing non-Indian towns which have already received and have had completed street widening and improvements projects well ahead of and prior to the Whiteriver Street Project which has been inordinately delayed since 1972; and

WHEREAS, Title VI of the Civil Rights Act of 1964 prohibits discrimination under any program which receives federal assistance based upon the grounds of race, color or national origin; and

WHEREAS, said statute specifically applies to the Federal Highway Administration Federal Aid Highway Program pursuant to 23 C.F.R. 200; 49 C.F.R. 21 and said implementing regulations require that each participating state such as the State of Arizona give assurances of compliance with Title VI and establish effective procedures for its enforcement pursuant to 23 C.F.R. 200.9; and

WHEREAS, Federal regulations further require that the State of Arizona Department of Transportation establish a civil rights unit with responsibility for monitoring Title VI compliance and said unit is required to develop procedures for prompt processing and disposition of Title VI complaints and further that the State must review the conduct of counties for compliance with Title VI 23 C.F.R. 200.9 (b); and

WHEREAS, in addition to Title VI Non-Discrimination Requirements with respect to federal funds, the laws of the State of Arizona as well as the 14th Amendment to the Constitution prohibit discrimination with respect to state and local funds and that recent federal court cases have held that an action may be brought by an Indian Tribe or by the United States as trustee against a county or state to secure full participation in federal, state or local highway programs and support the principle that Indian people are entitled to insist on receiving their fair share of highway benefits as citizens of the United States and of the states in which they reside, and that Indians are entitled to participate in federal, state, and local roads programs to the same extent as other citizens with respect to state administration of programs funded by federal financial assistance;

WHEREAS, Indian reservation roads monies spent by the Bureau of Indian Affairs supplement and do not supplant federal aids funds administered under state jurisdiction and accordingly if a Federal Aid Secondary Highway passes through the reservation, it must receive a fair and equitable share of state administered federal aid funds before the Bureau obligates Indian reservation monies to the highway and the State of Arizona cannot offset state funding to the extent of BIA road construction; and

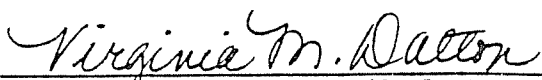
WHEREAS, the Federal Highway Administration has within it a civil rights compliance office which may provide assistance to Tribes to obtain accurate documentation concerning state and county road services or lack of services to the reservation in comparison with revenues and other objective measures and that the Tribal Council has reason to believe that state and county roads systems do not serve the Fort Apache Indian Reservation to the same extent as they serve other unincorporated portions of the county or cities of similar size in the State as described in this resolution; specifically, that towns of similar size with less street traffic have received highway funding have had completed street improvement projects while the White Mountain Apache Tribe has waited since 1973; and has recently received notice that the Whiteriver Street Project which was to commence FY 93-94 may be delayed an additional year as evidenced by the March 16, 1992 memorandum from Harry A. Reed, Director, Transportation and Planning Division to Tribal Engineer John S. Bereman attached and incorporated by reference hereto; and

WHEREAS, the Tribal Council concludes that a complaint should be filed with the Federal Highway Administration requesting that it conduct a civil rights compliance investigation of ADOT funding for the Whiteriver Street Project.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Chairman to request the Federal Highway Administration Office of Civil Rights Compliance to conduct an investigation of the Whiteriver Route 73 street improvement project to a determine whether or not Title VI or other applicable civil rights provisions have been violated by the State of Arizona.

The foregoing resolution was on March 18, 1992, duly adopted by a vote of SEVEN for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i) of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe June 27, 1958, and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).


Chairman of the Tribal Council


Secretary of the Tribal Council

ECS FILE: IGA-88-63

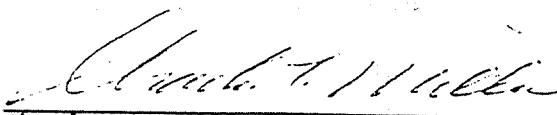
PROJECT: S-215-306PE, -506C

SECTION: Whiteriver Streets

RESOLUTION

BE IT RESOLVED on this 3 day of August, 1988, that I, CHARLES L. MILLER, as Director, ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the State of Arizona that the DEPARTMENT OF TRANSPORTATION, acting by and through the Highways Division, enter into an Intergovernmental Agreement with the White Mountain Apache Tribe for right-of-way, drainage, signalization, parking and maintenance responsibilities relative to the construction of S.R. 73 from Milepost 337.9 to Milepost 340.0.

THEREFORE, authorization is hereby given to draft said agreement which, upon completion, shall be submitted for approval and execution by the Chief Deputy State Engineer.



Charles L. Miller, Director
Arizona Department of Transportation

RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

- WHEREAS, the Tribal Council of the White Mountain Apache Tribe requested certain improvements to State Route 73, to include roadway widening and associated paving, drainage improvements, curbing with associated gutter, appurtenant sidewalks and traffic signals and crosswalks as needed for the town of Whiteriver, located within the exterior boundaries of the Fort Apache Indian Reservation; and
- WHEREAS, the Tribal Council first requested said street construction improvement in 1978, now designated as ADOT Project No: 73-NA-337/H069204C, ECS file JPA88-63, Section SR73 Whiteriver Streets, but to date said construction has not commenced and in fact, the Tribal Council is now advised that construction may not commence until FY 94; and
- WHEREAS, the reservation border towns of Show Low and Pinetop-Lakeside, as well as other small communities between the reservation and the town of Holbrook, already have completed road widening projects with sidewalks, curbs, and other improvements which enhance business opportunities, tourism, community growth and the aesthetic appearances of said communities; and
- WHEREAS, the community of Whiteriver, through which State Route 73 transverses, currently carries an estimated 10,000 motor vehicles per day, including but not limited to extensive school bus traffic, tourist vehicles, hospital, federal and tribal governmental traffic and heavy truck traffic from the tribal sawmill; and
- WHEREAS, the population of Whiteriver is equal to or exceeds surrounding communities off the reservation which are already enjoying the completion of their road widening and beautification projects; and
- WHEREAS, the White Mountain Apache Tribe is willing to donate additional rights-of-way to the State of Arizona for purposes of accomplishing the above described and numbered Whiteriver Street Project, and has already removed buildings in the path of said road construction; and

Resolution No. 01-91-29

WHEREAS, it is imperative in the interest of traffic safety to children, the elderly and persons generally, and in order to move the extensive motor vehicle traffic between Whiteriver and the tribal communities of Canyon Day, Cedar Creek, Cibecue, Hondah-McNary, and reservation border towns, that the Whiteriver street widening project be accomplished as soon as possible; and

WHEREAS, in order to facilitate construction and completion of the Whiteriver street project, the Tribal Council concludes that authorization should be delegated to Tribal Chairman Ronnie Lupe to negotiate the final terms and to execute any and all necessary Memorandums of Agreement with the State of Arizona, Department of Transportation, so that the Whiteriver Street Project may be expedited; and

WHEREAS, the Tribal Council further agrees that the Whiteriver Streets Project should also be extended with additional funding from ADOT to include construction of turnoffs to the Cradle Board Housing Development and Whiteriver Indian Health Service Hospital, and that the road widening and improvement should eventually extend from the turnoff to the Alchesay Fish Hatchery on Route 73 south to the Kinishba turnoff in the tribal community of Canyon Day, and that the foregoing extensions are considered as a priority by the Tribal Council; and

WHEREAS; the Tribal Council requests that the ADOT also set aside funds to widen and improve Route 73 from Canyon Day to Carrizo Junction to serve the communities of Whiteriver, Canyon Day, Cedar Creek, Carrizo and Cibecue, and to provide safe access for tribal members, tourists, visitors and employees of said communities and to enhance reservation economic development.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby requests the State of Arizona Department of Transportation Board to utilize its good offices to expedite the design phase and construction of Whiteriver streets project No. 73-NA-337/H)69204C.


BE IT FURTHER RESOLVED by the Tribal Council that it hereby sets as a high priority the widening and extension of the above described Whiteriver Streets Project including turnoffs to the Whiteriver Indian Health Service Hospital and Cradle Board Housing Project on Route 73, to fully extending widening of the roads from the turnoff to the Alchesay Fish Hatchery to the Kinishba turnoff at Canyon Day community, and to widen and improve Route 73 from Canyon Day to Carrizo Junction.

Resolution No. 01-91-29

BE IT FURTHER RESOLVED by the Tribal Council that it hereby authorizes Tribal Chairman Ronnie Lupe to negotiate the final terms of a Memorandum of Agreement with the State of Arizona, Department of Transportation, in respect to the Whiteriver Street Project, and any addendum or additional Memorandum of Agreement which may become necessary for construction of the Whiteriver Indian Health Service Hospital turnoff, Cradle Board turnoff, widening of Route 73 to the Alchesay Fish Hatchery turnoff, south to the Kinishba turnoff at Canyon Day and from Canyon Day to Carrizo Junction.

The foregoing resolution was on January 31, 1991, duly adopted by a vote of ten for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (a) (b) (h) (i) (j) (k) of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe June 27, 1958, and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).


Chairman of the Tribal Council


Secretary of the Tribal Council

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FORT APACHE INDIAN AGENCY
WHITERIVER, ARIZONA